

SEP 28 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

MARTA REYES-RODRIGUEZ,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 05-74341

Agency No. A29-262-888

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 24, 2007***

Before: CANBY, TASHIMA and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Marta Reyes-Rodriguez, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming without opinion an immigration judge's ("IJ") decision denying her motion to reopen deportation proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review questions of law de novo. *See Lin v. Gonzales*, 472 F.3d 979, 981 (9th Cir. 2007). We grant the petition for review and remand.

The IJ erred in concluding that Reyes-Rodriguez was precluded from filing a motion to reopen deportation proceedings on the ground that she departed the United States after she was ordered deported in absentia. *See id.* at 982 (holding that 8 C.F.R. § 1003.23(b)(1) does not preclude jurisdiction over motions to reopen filed by petitioners who had been lawfully deported after the completion of immigration proceedings and then reentered illegally).

Accordingly, we remand to the BIA with instructions to remand to the IJ for further proceedings consistent with this disposition.

In light of our decision, we do not address Reyes-Rodriguez's remaining contentions.

PETITION FOR REVIEW GRANTED; REMANDED.